

Summary: Sale of Alcoholic Beverages Regulations Board of Selectmen Town of Brookline

The Board of Selectmen for the Town of Brookline offers this summary of its Sale of Alcoholic Beverages Regulations to assist the public with understanding the Regulations. It provides a synopsis of the Regulations and refers to the relevant sections in brackets.¹

By way of brief overview, under Chapter 138 of the Massachusetts General Laws, state and local government have shared responsibility and authority to issue liquor licenses, regulate licensed establishments, and impose sanctions for violations of applicable law. The Alcoholic Beverages Control Commission is the responsible state agency. In Brookline, the Board of Selectmen is the local licensing authority. Any person or business wanting a liquor license must apply to the Board for one. The Board may attach any term or condition to a license as may be consistent with applicable law. Besides applicable statutes, regulations and by-laws, applicable law includes the Town's building, fire, zoning, health and sanitary codes. [A.1, A.2]

Policy:

- to provide for a reasonable number and variety of well-run establishments for the sale and service of food and drink
- to regulate such establishments to ensure they are operated responsibly and do not detract from the quality of life in neighborhoods or in the Town as a whole, and specifically
 - to require that principals and managers are of sound character and are legally qualified
 - to ensure that in restaurants, the service of alcohol is a secondary service that supports the primary function of food service (note: Brookline does *not* license bars or taverns that serve only snacks)
 - to regulate hours to protect the quality of life in neighborhoods, while at the same time promoting a vibrant local restaurant community
 - to ensure server training and other conditions to support the responsible service of alcoholic beverages
- to maintain strong and consistent enforcement of all liquor laws and regulations, through
 - regular inspections that will be conducted by the police
 - imposition of sanctions, such as suspension or revocation of a license, reduced hours, or other restrictive conditions, against violators.

The Regulations have been enacted to achieve the above-summarized Policy. They have five sections:

Section A applies to *all* liquor licenses except temporary ones.

Section B applies to common victualler and innholder liquor licenses (liquor licenses for those licensed as restaurants or hotels). These are also called "Section 12 licenses" after the section of Massachusetts General Laws Chapter 138 governing them.

¹ The Board of Selectmen has issued this summary as technical assistance only. In the event it conflicts with applicable law, applicable law governs.

Section C applies to retail package store licenses. These are also called “Section 15 licenses” after the section of Chapter 138 governing them.

Section D applies to liquor licenses for private clubs that sell alcoholic beverages (these are also Section 12 licenses).

Section E applies to temporary licenses to sell alcoholic beverages under Section 14 of Chapter 138 (“Section 14 licenses”) and certain other temporary licenses, such as those given to non-profits to sell alcoholic beverages in connection with fundraisers. Section E also applies to permits to furnish (on a non-sale basis) alcohol on Town-owned property (including School Department property).

Section A: General Guidelines

This section of the Regulations applies to **all** restaurant, hotel, retail package store, and club licenses. [A.1]

In reviewing a license application, the Board considers whether the public need and the common good would be served by granting the application. [A.4] In doing so, the Board may examine [A.3, A.4, A.18]:

- the number and location of existing licenses
- the sort of operation proposed
- the qualifications of the applicant
- the qualifications of the manager
- any impact on noise or traffic
- any potential harm
- any failure to comply with laws and regulations
- advisory reports from the Police, Fire, Building, and Health Departments and the Treasurer/Collector.

Applying for a License: Persons applying for a license must be United States citizens, 21 years of age or older, and of good character. If a corporation is the applicant, a majority of the directors must be U.S. citizens. [A.3]

The application must be truthful and complete. Filing fees and licensing fees must be paid promptly by certified check. [A.4]

All applicants must show:

- a legal right to the licensed premises [A.4]
- proof of U.S. citizenship and age [A.4]
- a detailed description of the premises, including signage [A.7]
- if serving food:
 - a menu and general description of the operations [A.4]
 - a plan for the control and elimination of litter [A.4]
 - appointment by its board of directors of a Manager (and, if desired, up to two Alternate Managers) who is a U.S. citizen, 21 years of age or older, of character satisfactory to the Board, and who has full authority and control of the premises

and the business and whom the Board deems capable of fulfilling his or her managerial responsibilities. [A. 18]

Any applicant for renewal must show

- a description of any significant change in operations [A.4]
- that all taxes and charges owed to the Town are paid on a current basis [A.8].

For multiple applications for or transfer of licenses, see A.5 and A.6.

Approval of Changes: Any license holder must apply to the Board for approval *before* undertaking any of the following:

- any structural changes to the premises (and the application for changes must include a detailed description) [A.7]
- any changes in the alcohol service areas [A.7]
- any physical change that increases seating capacity [A.7]
- any rearrangement of the premises [A.7]
- any change in corporate name, status, or trade name [A.9]
- any change in Manager, Alternate Manager, or corporate directors [A.10]
- other corporate transactions [A.10]
- any significant change in the operations [A.10]
- closing the business or maintaining an inactive license temporarily or permanently [A.11].

Notifications: The licensee must immediately notify the Board in writing of

- bankruptcy and court proceedings [A.12]
- foreclosures under assignment of stock [A.13].

Management responsibilities: The Manager is responsible for [A.18, A.22]:

- maintaining order and decorum
- cooperating with Town Officials to ensure safe and orderly facilities
- not permitting any illegal activities.

Cleanliness: All licensed premises must be maintained in a clean and sanitary condition in accord with the Health Department regulations. [A.30]

Noise: All licensed premises shall comply with Brookline's Noise By-Law, which strictly controls noise between 10 p.m. and 7 a.m. (See Article 8.15 of the Town of Brookline By-Laws.) [A.31]

Lighting: All licensed premises must be lighted sufficiently to ensure the safety of the patrons and for the Board or its agents to make observations. [A.32]

Official access: The police may enter a licensed premise at any time to collect information relevant to enforcing applicable law, regulations, and by-laws. [A.14]

Documentation: Licensees must:

- keep a readily available up-to-date list of employees with their ages and documentation of the licensee's Safe Service of Alcohol Policy and server training. [A.14, A.20, A.26, A.27]
- display their licenses and permits [A.15]
- not vary the occupancy certified by the Building Department [A.16].

Hours: The Board sets the hours of operation for the sale of alcoholic beverages, within the constraints established by Chapter 138. [A.17]

- No patrons may be on the premises at other times unless permitted by the licensee's common victualler, innholder, club, or food vendor license. [A.17]
- If it is necessary for an employee or contractor to be on the premises after the closing hour, the Manager may in some circumstances need to contact the Police. [A.19]

Non-Discrimination: No licensee shall engage in unlawful discrimination on the basis of race, color, national origin, creed, disability, sex, sexual orientation, or ancestry. [A.33]

Drinking by employees: No Manager or employee may consume any alcoholic beverages while on the premises. [A.21]

Minimum age, intoxication: No alcoholic beverages may be sold to anyone who is under twenty-one (21) years of age or intoxicated. [A.23]

- Proof of age requires valid identification. [A.24]
- All licensees must post conspicuously an explanation of this prohibition and penalties for violation in the form distributed by the Alcoholic Beverages Control Commission. [A.25]
- No employee under the age of 18 years old may handle, sell, mix or serve alcohol. [A.20]

Pricing: The price of any alcoholic beverage [A.28]:

- must be at least the actual cost
- may not include a credit for an admission charge
- may not be discounted for any particular hour(s) of the day or day(s) of the week.

No minimum charge may be made for alcoholic beverages.

Drinking games and donations: Drinking games on licensed premises are permitted, as are donations by a licensee of alcoholic beverages to be used as prizes in a game of chance. [A.29]

Prohibited beverages: Consistent with state law, the Regulations prohibit any alcoholic beverage containing caffeine and any malt beverage containing guarana, taurine, ginkgo biloba, ginseng or any other stimulant. [A.34]

Sanctions: The Board may take action against the licensee for violation of the Regulations or other applicable law or a condition on the license. [A.35]

Section B: Common Vitualler and Innholder Licenses

This section of the Regulations pertains to licenses for restaurants and hotels that sell alcoholic beverages. Such licenses are also called “Section 12 licenses,” after the section of Chapter 138 governing them.

These licensees must also comply with Section A of the regulations. [B.1]

Applying for a license: In addition to meeting the requirements under Section A, applicants must:

- ***not*** have been convicted of violating a federal or state narcotics law [B.2]
- show proof of coverage under a sufficient liquor legal liability insurance policy [B.5]
- show evidence that they are operating a licensed restaurant with food service in all areas where alcohol is served except for an approved waiting area [B.7]
- request a separate entertainment license for any desired entertainment, including recorded music or television [B.15]
- request any desired outdoor seating and service (which request the Board will evaluate by considering whether the proposed outdoor dining is safe and sanitary, and whether it would create a public nuisance) [B.6]
- show, upon request, an annual financial report. [B.4]

The Board may also issue a seasonal license. [B.3]

Limits on Service of Alcoholic Beverages:

- No more than two alcoholic beverages per person may be served without food [B.7]
- The use of pitchers and carafes is limited [B.8]
- No service of drinks in containers of more than 16 ounces [B.8]
- No more than one alcoholic beverage drink shall be served to a patron at one time [B.8]
- No patron shall be served a fourth alcoholic beverage drink without the prior approval of the Manager [B.8]
- All alcoholic beverages shall be served in open containers by TIPS or equivalent-certified employees directly to the patron [B.9]
- No alcoholic beverages may be served over a counter except a counter with seating at which food service (not just snacks) is also available [B.9]
- No alcoholic beverages served on the premises shall be allowed to be removed from the premises [B.9]
- No patron shall be allowed to bring alcoholic beverages on the licensed premises for the purpose of consumption on such licensed premises. [B.9]

Hours: The Board sets the opening and closing hours based on the public need and the common good. [B.10]

- Consistent with state law, the Board may not restrict a licensee from being open between 11 a.m. and 11 p.m. on weekdays and Saturdays, and between noon and 11 p.m. on Sundays.
- Consistent with state law, a licensee will not be permitted to sell alcohol earlier than 10 a.m. on Sundays and 8 a.m. on all other days, nor later than 2 a.m.

- In Brookline, the hours for the sale and service of alcoholic beverages are restricted to the hours during which food service is available, with the exception of the last hour before the closing hour that is stated on the license.
- “Last call” shall be at least one-half hour prior to the closing hour. All tables and bars must be cleared within one-half hour after the closing hour.
- The Board shall not decrease a licensee’s hours until after a public hearing.

Bar Seats: The ratio of bar seats to table seats is subject to the review and approval of the Board. [B.8]

Tastings: A licensee may provide on-premises tastings of small sample drinks if served with food and the licensee does not solicit orders for off-premises consumption. [B.11]

Prices: Licensees must maintain a price schedule showing charges for all drinks and charge the stated price. [B.13]

Posting: All licensees must post the penalties for operating a motor vehicle under the influence of alcohol in the form distributed by the Alcoholic Beverages Control Commission. [B.14]

Entertainment: Any entertainment, including, television, or recorded music, requires a separate entertainment license from the Board. [B.15]

Clear View: Licensees may not obstruct a clear view of the interior of the licensed premises from the outside. [B.16]

Section C: Retail Package Store Licenses

This section of the Regulations pertains to retail package store licenses, which are also called “Section 15 licenses,” after the section of Chapter 138 governing them.

These licensees must also comply with Section A of the regulations. [C.1]

Applying for a license: In addition to meeting the requirements under Section A, the applicant must

- *not* have been convicted of a felony [C.2]
- be a resident of Massachusetts. [C.2]

The premises may not be connected to a restaurant or club that sells alcoholic beverages. [C.3]

No one may have more than one retail package store license in Brookline or more than three in Massachusetts. [C.4]

Hours and Days: The Board sets a licensee’s opening and closing hours based on the public need and the common good. Consistent with state law, licensees will not be permitted to sell alcohol earlier than noon on Sundays and 8 a.m. on all other days, nor later than 11 p.m., except on days preceding a legal holiday, when the Board may permit a licensee to sell alcohol until 11:30 p.m. [C.5]

Food Vendors: Any business with a retail package store license that also holds a food vendor or common victualler license may not expose alcoholic beverages for sale during hours or days when it is not licensed to sell alcoholic beverages. [C.6]

Consumption and Tastings: Alcoholic beverages must not be sold to be drunk on the premises, except that licensees may provide without charge on their premises certain sample tastings. [C.7]

Pricing and Packaging: Licensees must conspicuously post the price list of alcoholic beverages. Sales must be made only in the original package. [C.8]

Posting: Licensees must post the penalties for operating a motor vehicle while drinking from an open container in the form distributed by the Alcoholic Beverages Control Commission. [C.9]

Deliveries: Licensees must keep a written log of everyone to whom alcoholic beverages are delivered outside of the premises. All deliveries must be made in vehicles permitted by the Alcoholic Beverages Control Commission and by persons at least 21 years of age who have received training and certification as required by Section A.24. [C.10]

Seating and Tables: No seating or tables for customers are allowed except as permitted by the Board. [C.11]

“Nips”: “Nips” may be sold only from a location that is not accessed directly by customers, such as behind a counter. [C.12]

Section D: Club Licenses

This section pertains to licenses for private clubs that sell alcoholic beverages. Like restaurant and hotel liquor licenses, private club liquor licenses are also “Section 12 licenses.”

These licensees must also comply with all the regulations in Section A and the following regulations in Section B: [D.1]

B.2 Qualified Applicants

B.3 Seasonal Licenses

B.5 Required Insurance

B.6 Service and Consumption Limited to Approved Areas / Outdoor Seating

B.8 Service of Alcoholic Beverages Limited

B.13 Price Schedules

B.14 Required Posting

B.15 Entertainment

B.16 Clear View of Premises’ Interior

Applying for a license: In addition to meeting the requirements under Section A, the applicant must not have been convicted of violating a federal or state narcotics law. [D.2]

Hours and Service on Premises: The provisions regarding the hours of sales and service on the premises are the same as those in Section B pertaining to restaurants and hotels, with the exception of the food service requirement. [D.3, D.4]

List of Officers, Members and Employees: Annually, the licensee must submit to the Board the names and residences of all the club’s directors or officers, members, and employees [D.5]

Guests: Licensees must maintain a book with the name of each guest and the accompanying member. Only members and guests may be served alcoholic beverages. [D.6, D.7]

Section E: Temporary Licenses to Sell Alcohol and Permits to Serve Alcohol on Town or School Property

This section of the Regulations pertains to licenses to sell alcohol on a time-limited basis (such as licenses issued pursuant to Section 14 of the Massachusetts General Laws, farmer-winery licenses, and certain other temporary licenses, such as those issued to non-profits in connection with fund-raisers).

This section also pertains to permits to serve alcohol (on a non-sale basis) on any town-owned property.

Temporary licenses and permits are subject to compliance with the following regulations in Section A: [E.1]

- A.2 Legislative Authority / Compliance with Laws, Regulations, By-Laws and Conditions
- A.3 Qualified Applicants (except that U.S. citizenship requirements are applicable only to applicants for certain types of temporary licenses)
- A.14 Access to Premises, Inspections, Required Documentation on Premises, and Requests for Information by the Board and its Agents
- A.15 Display of Licenses and Permits
- A.16 Occupancy
- A.21 Employee Consumption Prohibited
- A.22 No Disorder, Disturbance, or Illegality on Licensed Premises
- A.23 Service Prohibited to Certain Individuals
- A.24 Identification Cards
- A.28 Charge for Alcoholic Beverages
- A.32 Interior Lighting
- A.33 Discrimination
- A.34 Prohibited Beverages

and the following regulation in Section B: [E.1]

B.8 Service of Alcoholic Beverages Limited.

Types of Temporary Licensees: The Board may grant a temporary license

- to the manager of a non-profit organization for the sale of any alcoholic beverage [E.2]
- to the manager of any activity for the sale of wine and malt beverages only [E.2]
- for the sale of wine and malt beverages in dining halls maintained by degree-granting educational institutions [E.2]
- to a farmer-winery for an agricultural event [E.3]
- to a charity selling donated wine to be drunk on premises [E.4.a]
- to a charity selling together with a common victualler, innholder, and/or club primarily for charitable purposes wine to be drunk on the premises [E.4.b]
- to a charity auctioning donated wine to be drunk off premises [E.4.c]
- to a retail package store auctioning wine to be drunk off premises. [E.4.d]

Requirements for Applications and Fees: See Section E.8. In addition:

- No one who has applied for or been granted a Section 12 or Section 15 liquor license may receive a Section 14 temporary license. [E.2]
- No applicant may receive a Section 14 temporary license or licenses for more than an aggregate of 30 days in a calendar year, with the exception of educational institution dining halls. [E.2]
- The Board may decline to consider any application filed less than 21 days before the event. [E.8]

Manager: A responsible manager shall be physically present at all times. [E.6]

Hours: The Board specifies the permitted hours consistent with the public need and common good, with certain other limitations identified in the sections pertaining to the various types of temporary licenses and permits. [E.2]

Minimum Age/ Intoxicated Persons: No sales or service may be made to persons who are under 21 years of age or intoxicated. [E.7]

Areas: No sales or storage of alcoholic beverages are permitted except in areas specified in the temporary license or permit. [E.9]

Tastings: Farmer-wineries may offer tastings. Tastings are otherwise prohibited. [E.10]

Authorized Suppliers: Any alcoholic beverages sold under a Section 14 temporary license must have been purchased from certain types of ABCC-licensed businesses. [E.11]

Town Property: The Board may grant a temporary permit to furnish alcoholic beverages on Town property (non-sales; sales require a temporary license rather than a permit). [E.5]
Those using Town property must comply with all Town laws, regulations, and guidelines. [E.12]

Denials: The Board may deny a request for a temporary license or permit to furnish alcohol on Town property if [E.13]

- a public disturbance or annoyance may be created
- the public welfare, convenience or necessity will not be served
- it is not satisfied that the applicant will comply with applicable laws, procedures or guidelines.